P.R. No. 2012/ 6 Dated 5.01.12
Presented by Shri Bhargava Advocate
dated 7/1/06

COURT FEE 20 Rs. INDIA बीस रुपये TWENTY RUPEES CANCELLED

(3)

Vs 20

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (Civil) No. 668 /2006

APPELLANT : Smt. Neelam Agrawal,
W/o Shri Bal Krishna Agrawal,
Aged about 35 years,
Occupation- Business, R/o 24 Doongaji Colony, Raipur (C.G.) through its Power of Attorney Holder Shri Santosh Agrawal, S/o Shri R. D. Agarwal, R/o 24, Doongaji Colony, Raipur (C.G.).

-Versus -

RESPONDENT : The Municipal Corporation,
Raipur, through its Commissioner,
Municipal Corporation, Raipur(C.G.).

APPEAL UNDER ORDER 43 RULE 1 (r) OF THE CODE OF CIVIL PROCEDURE.

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AFR

25/09/06

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No. 868/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20.09.2006 Shri Gautam Bhaduri with Shri Rajeev Shrivastava, learned counsel for the appellant. Shri H.B. Agrawal, learned Sr. counsel with Shri Manish Agrawal, Counsel for the respondent. Heard. 2. The appellant has preferred this Miscellaneous Appeal under Order 43 Rule 1(r) of the Code of Civil Procedure against the order dated 14-7-2006 passed by learned 10th Additional District Judge, Fast Track Court, Raipur in M.J.C. No. 30/2006 by which while considering the application of the appellant under Order 39 Rules 1 and 2 read with Section 151 of C.P.C., the same has been dismissed on the ground that the above application is not maintainable in view of the fact that no civil suit has been filed by the appellant and only application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. has been filed and as per the orders of the High Court dated 10-7-2006, 7 days time was given to the appellant and the Court was not competent to give further time to the appellant. With	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.(C) No. 868/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

these observations, the application has been dismissed as not maintainable and the proceedings have been disposed of.

3. Learned counsel for the appellant submits that initially a writ petition was filed by the appellant which was registered as W.P. No. 2735/2006 and the same was disposed of vide order dated 10-7-2006 with an observation that the disputed facts are involved in the matter and the same cannot be settled in writ jurisdiction as they require recording of evidence. The writ petition was dismissed with further observation that if so advised, the petitioner may approach civil court for redressal of her grievances and while disposing of the petition, the time of 7 days from the date of passing of the order was allowed to the appellant to enable her to approach the civil court and in the meanwhile, i.e. within 7 days, the respondents were restrained from undertaking any demolition proceeding.

4. Learned counsel for the appellant referring the judgment of the Division Bench of this Court in Smt. Kumari Bai & Anr. etc. –v- State of Chhattisgarh & Anr. etc. reported in AIR 2006 C.G. 52 contends that in appropriate cases, the civil courts are competent to grant relief under the emergent circumstances and can pass orders of injunction by invoking their inherent powers. He referred to and read the judgment in the matter

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मामला क्रमांक M.A.(C).No. 868/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –3–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of Ram Krishna Parashar –v- Chironji Lal Vaishya and Others reported in 1977 JLJ 184 which finds reference in the matter of Smt. Kumari Bai (supra) and ~~contents~~ Contends that in appropriate case, injunction can be granted in pending proceedings only but such proceedings need not be a suit and such miscellaneous proceedings can be initiated even by filing of the petition specifically for the purpose, though this procedure is to be adopted only in exceptional cases. Referring to para 12 of the above judgment, it is argued that it is necessary that in order to prevent the miscarriage of justice or in order to prevent an abuse of the process of Court, the procedure of allowing miscellaneous application to be filed for such a relief should be held permissible. Otherwise in most of the cases refusal to register such miscellaneous applications as miscellaneous civil cases will defeat the ends of justice and the provision of statutory notice will be a weapon in the hands of the Government or in the hands of a statutory Corporation like the Municipal Corporation or Municipal Committee to defeat the just right of a citizen and taking advantage of it and the Government or the Municipal Corporation would be able to demolish a standing structure altogether within the statutory period of a notice prescribed by the statute before a party could file a suit in a Court of law. Such an interpretation will not only be improper but it would amount to

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मामला क्रमांक M.A(N)O. 868/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

suffering miscarriage of justice. It cannot be permitted by the Court of law and under these circumstances; it has been held that the Courts are free to devise a procedure for the two purposes mentioned in Section 151 of the Code of Civil Procedure. It is argued that the Court below overlooking the binding judgment in the aforementioned cases, has dismissed the application preferred by the appellant holding the same to be not maintainable and, therefore, the finding of the Court is on the face of it erroneous and the same should be set aside.

5. On the other hand, Shri H.B. Agrawal, learned Senior Counsel appearing for the respondents supporting the impugned order submits that there is no dispute that the appellant did not file any civil suit and she simply filed the application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. and prayed for temporary injunction against the respondents. Referring to the provisions of Order 39 Rule 1 and 2 of C.P.C., it is argued that application under Order 39 Rules 1 and 2 of C.P.C. can be filed only in a pending civil suit as is evident from a bear reading of Rule 2 of Order 39 of C.P.C. It is further argued that the Court below has not committed any illegality by holding that the application preferred by the appellant was not maintainable and no interference is called for in this appeal. He further argued that though the statutory period mentioned

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in Section 401 of the Municipal Corporation Act has already lapsed after issuance of notice by the appellant, even then the appellant has not cared to file any civil suit before the trial Court and thus the conduct of the appellant is not *bonafide* and that should also be taken note of.

6. I have heard the learned counsel for the parties. I have perused the impugned order as also the other documents annexed with this application. I have gone through the judgment cited by the appellant. During the course of the argument, learned counsel for the respondent does not dispute the ratio adopted in the above cited judgments. His only objection with respect to the application of the judgments in the present set of facts is that though the application under Section 151 of C.P.C. was ~~not~~ maintainable at the instance of appellant but since the appellant has filed an application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C., the same should not be entertained by the Court below and the Court below has rightly rejected the application as not maintainable in the absence of pendency of any suit.

7. The objection taken by the respondent regarding application of the ratio of law laid down in the judgment of Ramakrishna Parashar (supra) which finds reference in the judgment in Smt. Kumari Bai (supra) is too

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मामला क्रमांक M.A.(C).No.868/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

technical. The rationale behind the above cited judgments are that in an emergent situation where the party apprehending an imminent irreparable injury is not precluded from filing proceedings before the Court of law and if any proceeding is initiated by such party, the law courts are bound to give appropriate remedies under the Code of Civil Procedure by registering miscellaneous case and in exceptional cases, prohibitory temporary injunction can be passed in favour of such party while exercising inherent jurisdiction under Section 151 of C.P.C. This application has been filed by the appellant under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. and, therefore, I am of the considered view that the judgments cited by the appellant in support of this appeal were squarely applicable and the Court below was duty bound to entertain the same and decide the application preferred by the appellant on merits and pass appropriate orders and the findings of the Court below that the application was not maintainable in the absence of pendency of suit before him is contrary to the spirit of the above judgments.

8. In the result, the instant appeal is allowed. The impugned order passed by the learned Additional District Judge, Raipur is set aside and the case is remanded back to the learned Additional District Judge, Raipur to decide the application preferred by the appellant on merits after

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

affording an opportunity of hearing to the parties to the proceedings. The parties are directed to appear before the trial Court on 4th October 2006 and the parties to adopt the course as per law. In the meanwhile, the respondents are restrained from undertaking any demolition proceeding till the disposal of that application.

9. Consequently, M.(C.)P. No. 1196/2006, M.(C.).P. No. 1322/2006 and I.A. No. 2758/2006 stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Pathak

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